

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUSTEES OF THE AUTOMOBILE
MECHANICS' INDUSTRY WELFARE
AND PENSION FUNDS LOCAL 701
Plaintiffs,

v.

AZTEC MATERIAL SERVICE CORP., an
Illinois corporation

Defendant.

FILED: APRIL 7 , 2008
08CV 1972 NF

JUDGE CASTILLO
No. MAGISTRATE JUDGE BROWN
Judge

Magistrate

COMPLAINT

Plaintiffs, **TRUSTEES OF THE AUTOMOBILE MECHANICS LOCAL NO. 701 WELFARE AND PENSION FUNDS**, by their attorneys, **PAUL M. EGAN** and **ARNOLD AND KADJAN**, complain against Defendant **AZTEC MATERIAL SERVICE CORP.**, an **Illinois corporation**:

COUNT I

1. (a) Jurisdiction of this cause is based on Section 301 of the National Labor Relations Act, 29 U.S.C. Section 185(a) as amended.

(b) Jurisdiction of this cause is based upon Section 502 of the Employee Retirement Security Act of 1974, 29 U.S.C. Section 1132, 1145 (“ERISA”), as amended.

2. Venue is founded pursuant to 29 U.S.C. Section 1132(e)(2) in this District where the Funds, as described in Paragraph 3, are administered.

3. (a) The Plaintiffs in this count are THE AUTOMOBILE MECHANICS LOCAL 701, WELFARE AND PENSION FUNDS the (“Funds”), and have standing to sue pursuant to 29 U.S.C. Section 1132(d)(1).

(b) The Funds have been established pursuant to collective bargaining agreements previously entered into between **AZTEC MATERIAL SERVICE CORP.** and Automobile Mechanics Local 701 and its affiliated local the (“Union”) and certain employer associations whose employees are covered by the collective bargaining agreement with the Union.

(c) The Funds are maintained and administered in accordance with and pursuant to the provisions of the National Labor Relations Act, as amended and other applicable state and federal laws and also pursuant to the terms and provisions of the agreements and Declarations of Trust which established the Funds.

4. Defendant, **AZTEC MATERIAL SERVICE CORP. (“AZTEC”)**, an Illinois corporation is an employer engaged in an industry affecting commerce with offices located within this Court’s jurisdiction.

5. As of November 9, 2006, **AZTEC** has entered into a collective bargaining agreement with the Union pursuant to which it is required to make periodic contributions to the Funds on behalf of certain of its employees (Exhibit “A”).

6. By virtue of certain provisions contained in the collective bargaining agreements, **AZTEC** is bound by the Trust Agreement establishing the Funds.

7. Under the terms of the collective bargaining agreements and Trust Agreements to which it is bound, **AZTEC** is required to make contributions to the Funds on behalf of their employees and, when given reasonable notice by Plaintiffs or their representatives, to submit all necessary books and records to Plaintiff’s accountant for the purpose of determining whether or not it is in compliance with its obligation to contribute to the Funds.

8. Since November 9, 2006 through to the present, **AZTEC** has admitted, acknowledged and ratified the collective bargaining agreements entered into with the Union by

filing periodic report forms with the Funds by making some but not all of the periodic payments to the Funds as required by the collective bargaining agreements.

9. A combined employer's monthly remittance report as forwarded to **AZTEC** for delinquencies and penalties thru the month of January 2008. This remittance report showed total welfare payments due of \$13,845 plus \$4,019.00 in penalties for a total owed to welfare of \$17,864.00. Pension contributions due of \$5,135.00 plus \$1,589.00 in penalties for a total owed to pension of \$6,724.00. To date, these amounts have not been paid (Exhibit "B").

WHEREFORE, Plaintiffs pray for relief as follows:

A. Judgment be entered against **AZTEC** and in favor of Plaintiffs, the Automobile Mechanics Local No. 701 Welfare and Pension Funds, in the amount of \$17,864.00 for the welfare fund and \$6,724.00 for the pension fund plus attorneys fees pursuant to 29 U.S.C. 1132(g)(2).

B. This Court enjoin **AZTEC** from violating the terms of the collective bargaining agreement and Trust Agreements by failing to make timely payments to the Funds and be ordered to resume making those payments.

C. This court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

COUNT II

1. Plaintiffs reallege paragraphs 1 through 8 of Count I of the Complaint for this Count II.

9. By virtue of the foregoing, Plaintiffs have been damaged in an amount not presently ascertainable.

WHEREFORE, Plaintiffs pray for relief as follows:

A. **AZTEC** be ordered to permit an audit of all their books and records to determine whether or not they have complied with the applicable contribution requirements for the period from November 9, 2006 through the present.

B. Judgment be entered against **AZTEC** and in favor of Plaintiffs, the Automobile Mechanics Local No. 701 Welfare and Pension Funds.

C. This Court enjoin **AZTEC** from violating the terms of the collective bargaining agreement and Trust Agreements by failing to make timely payments to the Funds and be ordered to resume making those payments.

D. This court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

Respectfully submitted,

**THE AUTOMOBILE MECHANICS LOCAL
NO. 701 WELFARE AND PENSION FUNDS**

By: s/Paul M. Egan
One of their Attorneys

Paul M. Egan
ARNOLD AND KADJAN
19 West Jackson Blvd.
Chicago, IL 60604
(312) 236-0415

Exhibit A

ARTICLE 28 - DURATION OF AGREEMENT

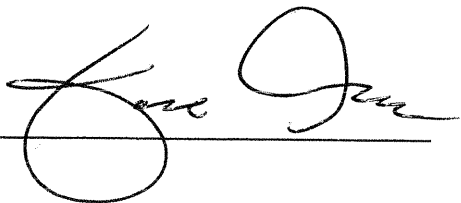
This Agreement shall become effective **JUNE 1, 2005** and shall remain in full force and effect through **MAY 31, 2010**, and from year to year thereafter unless and until it shall be terminated on May 31, 2010, on or a like date in any subsequent year thereafter by the giving by either party to the other or not less than sixty (60) days notice in writing of such termination.

SIGNED:

AZTEC MATERIAL SERVICE

**AUTOMOBILE MECHANICS UNION LOCAL
701 IAM&AW AFL-CIO**

By: _____



By: _____



Dated: _____

11/9/06

Dated: _____

10-23-06

Exhibit B

Aztec Material Service Corp			(773) 521-0909			Updated: 2/7/07			B.A.: E. Nickles		
3624 W 26th St 2nd Floor			Contact: Miriam Ramirez						#10213		
Chicago, IL 60623											
Contribution	Due Date		Welfare			Pension					
Month	Penalty Date		Contribution	Penalty	Welfare Total	Contribution	Penalty	Pension Total	Comments		
Feb-07 Penalty				350.00	350.00		138.00	138.00			
Apr-07 Penalty				420.00	770.00		165.00	303.00			
May-07 Penalty				403.00	1,173.00		158.00	461.00			
Jul-07 Penalty				585.00	1,758.00		237.00	698.00			
Aug-07 Penalty				468.00	2,226.00		189.00	887.00			
Sep-07 Penalty				585.00	2,811.00		237.00	1,124.00			
Oct-07 estimate	11/10/2007		4,680.00		7,491.00	1,896.00		3,020.00			
Oct-07 Penalty				448.00	7,939.00		181.00	3,201.00			
Nov-07 estimate			3,705.00		11,644.00	1,343.00		4,544.00			
Nov-07 Penalty	12/10/2007			370.00	12,014.00		134.00	4,678.00			
Dec-07 estimate	1/10/2008		3,900.00		15,914.00	1,501.00		6,179.00			
Dec-07 penalty	1/17/2008			390.00	16,304.00		150.00	6,329.00			
Jan-08 estimate	2/10/2008		1,560.00		17,864.00	395.00		6,724.00			
TOTAL			13,845.00	4,019.00	17,864.00	5,135.00	1,589.00	6,724.00			



AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY WELFARE FUND
AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY PENSION FUND

P.O. Box 94417 • Chicago, IL 60690 • 708-482-0110

COMBINED EMPLOYER'S MONTHLY REMITTANCE REPORT

TWO SEPARATE CHECKS ARE REQUIRED - MADE PAYABLE TO THE ABOVE LISTED FUNDS (773)

(773) 521-090

Date _____ Phone No. _____

PAYMENTS ARE DUE ON OR BEFORE THE 10TH OF THE MONTH FOLLOW

Report For The Month Of: OCTOBER 200

Covering Weeks Ending (Saturdays)			
(1)	(2)	(3)	(4)

4 13 20 27

ADD ON ANY NEW EMPLOYEES, HIRE DATE, SOCIAL SECURITY #

[illegible]

CALCULATION OF PAYMENTS DUE

- CALCULATION OF PAYMENTS DUE**
1. Total number of employees on all pages from whom payments are being made _____
 2. Total number of weeks on all pages for which payments are due _____
 3. Total Payment Due Pension Fund — Item 2 multiplied by \$ 17.00
 4. Total Payment Due Welfare Fund — Item 2 multiplied by \$ 95.00

$$\begin{array}{r} 6 \\ 24 \overline{) 1896} \\ \underline{4680} \end{array}$$

The Employer acknowledges that he is bound to the terms of the current Collective Bargaining Agreement, which may be amended and extended from time to time in area wide bargaining. Employer accepts and agrees to be bound to the terms of the Agreement and Declaration of Trusts of the Pension and Welfare Funds including the Standard Participation Agreements and any amendments thereto.

Employer warrants this report accurately states all persons working in covered employment under the collective bargaining contract or trust agreement. Contributions due are acknowledged to be Plan assets. The Employer has the obligation to contribute regardless of whether a Contribution Report is

Signature _____



AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY WELFARE FUND
AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY PENSION FUND

P.O. Box 94417 • Chicago, IL. 60690 • 708-482-0110

COMBINED EMPLOYER'S MONTHLY REMITTANCE REPORT

TWO SEPARATE CHECKS ARE REQUIRED - MADE PAYABLE TO THE ABOVE LISTED FUNDS

(773) 521-090

Date _____ Phone No. _____

PAYMENTS ARE DUE ON OR BEFORE THE 10TH OF THE MONTH FOLLOWING

Report For The Month Of: NOVEMBER 200

Covering Weeks Ending (Saturdays)			
(1)	(2)	(3)	(4)

3 10 17 24

AZTEC MATERIAL SERVICE CORP
3624 W 26TH ST
2ND FLOOR
CHICAGO IL 60623

ADD ON ANY NEW EMPLOYEES, HIRE DATE, SOCIAL SECURITY #

ADD ON ANY NEW EMPLOYEES, HIRE DATE, SOCIAL SECURITY #										IF EMPLOYEE DID NO IN A WEEK, RECORD L WORKED AND EXPLAIN SPACE BELOW OR ATTACHMENT.
(1)	(2)	(3)	(4)					TOTAL WEEKS		
NAME	DATE HIRED OR RE-EMPLOYED	SOCIAL SECURITY NUMBER	WEEKS PAID FOR							
			1	2	3	4	5			
ESPIN GERMAN	9/21/01	331-76-7449	w/o	0	0	0		1W	L010/24/07 + 1wk w/o	
ESPIN LUIS A	12/27/01	335-80-8651	X	X	X	X				
SAUCEDO RITO	4/23/98	455-23-7721	X	X	X	X				
SERRANO GERMAN	9/07/99	335-78-4292	X	X	X	X				
VARGA MARK	8/19/93	321-62-5522	X	X	X	X				
VILLEGAS MANUEL	9/14/06	342-96-9031	X	w/o	0	0		2W 1P	L010/25/07 + 1wk JAC + 1wk w/o	
TOTAL NUMBER OF WEEKS THIS PAGE								19W 17P	Page ____ of ____	

CALCULATION OF PAYMENTS DUE

- CALCULATION OF PAYMENTS DUE**
1. Total number of employees on all pages from whom payments are being made _____
 2. Total number of weeks on all pages for which payments are due _____
 3. Total Payment Due Pension Fund — Item 2 multiplied by \$ 79.00
 4. Total Payment Due Welfare Fund — Item 2 multiplied by \$ 195.00

Page _____ of _____

The Employer acknowledges that he is bound to the terms of the current Collective Bargaining Agreement, which may be amended and extended from time to time in area wide bargaining. Employer accepts and agrees to be bound to the terms of the Agreement and Declaration of Trusts of the Pension and Welfare Funds including the Standard Participation Agreements and any amendments thereto.

Signature _____

Employer warrants this report accurately states all persons working in covered employment under the collective bargaining contract or trust agreement. Contributions due are acknowledged to be Plan assets. The Employer has the obligation to contribute regardless of whether a Contribution Report is

RETAIN 2ND COPY FOR YOUR RECORDS



AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY WELFARE FUND
AUTOMOBILE MECHANICS' LOCAL 701 UNION AND INDUSTRY PENSION FUND

P.O. Box 94417 • Chicago, IL. 60690 • 708-482-0110

COMBINED EMPLOYER'S MONTHLY REMITTANCE REPORT

TWO SEPARATE CHECKS ARE REQUIRED - MADE PAYABLE TO THE ABOVE LISTED FUNDS

(773) 521-090

10213

Date _____ Phone No. _____

PAYMENTS ARE DUE ON OR BEFORE THE 10TH OF THE MONTH FOLLOWING

Report For The Month Of: DECEMBER 200

Covering Weeks Ending (Saturdays)				
(1)	(2)	(3)	(4)	
1	8	15	22	29

ADD ON ANY NEW EMPLOYEES, HIRE DATE, SOCIAL SECURITY #

[illegible]

CALCULATION OF PAYMENTS DUE

- | | |
|---|---------|
| 1. Total number of employees on all pages from whom payments are being made | 206/198 |
| 2. Total number of weeks on all pages for which payments are due | 1501.00 |
| 3. Total Payment Due Pension Fund — Item 2 multiplied by \$ 79.00 | 3900.00 |
| 4. Total Payment Due Welfare Fund — Item 2 multiplied by \$ 185.00 | |

The Employer acknowledges that he is bound to the terms of the current Collective Bargaining Agreement, which may be amended and extended from time to time in area wide bargaining. Employer accepts and agrees to be bound to the terms of the Agreement and Declaration of Trusts of the Pension and Welfare Funds including the Standard Participation Agreements and any amendments thereto.

Employer warrants this report accurately states all persons working in covered employment under the collective bargaining contract or trust agreement. Contributions due are acknowledged to be Plan assets. The Employer has the obligation to contribute regardless of whether a Contribution Report is

Signature _____

RETURN AND COPY FOR YOUR RECORDS



16 Employer acknowledges that he is bound to the terms of the current Collective Bargaining Agreement, which may be amended and extended from
17 ne to time in area wide bargaining. Employer accepts and agrees to be bound to the terms of the Agreement and Declaration of Trusts of the Pension
18 and Welfare Funds including the Standard Participation Agreements and any amendments thereto.